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No. 06-1034

In the

Supreme Court of the United States

JODIE SMOOK, Individually, and on behalf of all other persons similarly situated,

Petitioners,

v.

MINNEHAHA COUNTY, SOUTH DAKOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION OF JUVENILE LAW CENTER FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI AND BRIEF OF JUVENILE LAW CENTER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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MOTION OF JUVENILE LAW CENTER FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORIARI

Juvenile Law Center respectfully moves this Court, on behalf of twenty-three organizations, pursuant to Supreme Court Rule 37(2)(b), for leave to file an *amicus curiae* brief in support of Petitioners. In support, Juvenile Law Center states as follows:

1. Juvenile Law Center (JLC), the oldest multi-issue, public interest law firm for children in the United States, was founded in 1975 to advance the rights and well-being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies: for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. More detailed information about JLC is available at www.jlc.org.

2. JLC works to integrate juvenile justice practice and policy with knowledge of adolescent development. JLC has authored several publications on this topic, including *Kids are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Court*, a module in *Understanding Adolescents: A Juvenile Court Training Curriculum* (ed. by Lourdes Rosado, American Bar Association Juvenile Justice Center, Juvenile Law Center, Youth Law Center 2000). JLC's executive director, Robert G. Schwartz, co-edited *Youth on Trial: A Developmental Perspective on Juvenile Justice*, an examination of the impact of the legal system on adolescent development and psychology published in 2000 (ed. by Thomas Grisso and Robert G. Schwartz,

University of Chicago Press). JLC has also used knowledge of adolescent development to inform its contributions in two recent *amicus* briefs to this Court: *Roper v. Simmons*, 543 U.S. 551 (2005) (regarding the constitutionality of the death penalty for minors aged sixteen and seventeen at the time of their crimes) and *Yarborough v. Alvarado*, 124 S.Ct. 1706 (2004) (regarding whether a minor's age was properly considered when determining if the minor was in custody during a police interrogation).

3. JLC is particularly concerned with juvenile and criminal justice systems and their effect on children's emotional and psychological health. JLC is an active participant in the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, addressing the effects of juvenile and adult incarceration on juvenile offenders.

4. JLC helps to facilitate a national dialogue on juvenile justice issues both by participating as *amici* in cases across the country and conducting trainings at national conferences hosted by organizations such as the American Bar Association, National Council of Juvenile and Family Court Judges, Office of Juvenile Justice and Delinquency Prevention, and the National Association of Council for Children. JLC is also a co-founder, with the American Bar Association and the Youth Law Center, of the National Juvenile Defender Center (NJDC). NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

5. All of the aforementioned projects are the result of JLC's collaborations with medical and mental health professionals, national and local policymakers, social scientists, and advocacy agencies that work on behalf

of children. For example, *Youth on Trial: A Developmental Perspective on Juvenile Justice*, was co-edited by JLC's executive director and Thomas Grisso, director of forensic training and research in the department of psychiatry of the University of Massachusetts Medical School.

6. This case involves the constitutionality under the Fourth Amendment of the policy of the Minnehaha, South Dakota, County Juvenile Detention Center (JDC) to strip-search juveniles without probable cause or individualized suspicion upon entry to the facility. The application of the Fourth Amendment to strip searches of juveniles charged with minor offenses is a matter of first impression in the Supreme Court.

7. The Eighth Circuit's decision conflicts with its own precedent and the decisions of virtually every other circuit that strip-searches of adults for minor offenses are unconstitutional in violation of the Fourth Amendment protection against unreasonable searches..

8. The questions of law before this Court are closely tied to important and pressing public policy concerns related to appropriate care for children in the juvenile justice system. The Eighth Circuit's decision rests largely on the Court's holding that the detention center's duty to act *in loco parentis* necessitates the performance of searches on juveniles that would be unconstitutional if performed on adults. This conclusion raises vital concerns about the psychological effect of strip searches on adolescents, and the particular impact of such searches on children who have been the victims of sexual abuse and violence. As an organization that works closely with policy-makers, juvenile justice advocates, social scientists and medical and mental health professionals, JLC is positioned to offer unique insight to the Court regarding this issue.

9. Juliet Berger-White, Esq. of Hughes Socol Piers Resnick & Dym, Ltd., attorney for Petitioners, has consented on behalf of the Petitioners to Juvenile Law Center's request to file an *amicus curiae* brief in this matter.

10. Juvenile Law Center respectfully requests that this Court allow it to appear as *amici* in support of the petitioners, Jodie Smook and all other persons similarly situated, on the issue of the application of the Fourth Amendment to strip searches performed on juveniles charged with minor offenses in the absence of individualized suspicion.

WHEREFORE, Juvenile Law Center respectfully requests that this Honorable Court enter an order granting it leave to file an *amicus curiae* brief in support of the petition for a writ of certiorari.

Respectfully submitted,

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DATED: February 27, 2007

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INTEREST OF THE *AMICI*

Amici Juvenile Law Center, *et al.*[1] represent twenty-three organizations and individuals throughout the country who work on issues of child welfare, juvenile justice and children's rights generally. *Amici* have a unique perspective on minors who come into contact with the juvenile justice system either because of allegations of delinquent behavior or non-delinquent status offenses. Collectively, *Amici* share a deep concern that the Eighth Circuit's decision in this case, if allowed to stand, would subject scores of already vulnerable youth—charged with only status offenses or minor delinquent infractions—to traumatic strip searches with neither probable cause nor individualized suspicion that they may actually be in possession of weapons or contraband. Widely accepted research on adolescent development, missing from the Eighth Circuit's analysis, demonstrates that strip searches can traumatize children—particularly the many detained youth who have histories of abuse.[2] *Amici* join together in support of Petitioners Petition for a *Writ of Certiorari*.

INTRODUCTION

This case involves a question of exceptional importance regarding the constitutionality under the Fourth Amendment of the Minnehaha County Juvenile Detention Center's (JDC) policy to strip-search juveniles arrested on minor violations.[3] The Eighth Circuit's decision in this case

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[1] *Amici* file this brief with the consent of the Petitioners, Smook, *et al*, and with a pending motion for Leave to Appear as *Amicus Curiae* dated February 27, 2006. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief. A list and brief description of all *Amici* appears at Appendix A.

[2] When applying a constitutional principle to adolescents, courts can rely on research about adolescent development introduced by *amici*. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 569 (2005).

[3] These offenses include, among others, petty theft, liquor violations, running away from home, curfew violations, truancy, window peeking, tobacco use, and driving under a revoked license. *Smook v. Minnehaha*

sets a disturbing precedent that departs from controlling case law and widely accepted psychological research. Purportedly based on the longstanding child-protective principles of *parens patriae* and *in loco parentis*, the decision flips these principles on their heads to justify the unwarranted infliction of potentially serious trauma to already vulnerable youth. These principles, centuries old and intended to shield children from harm, are wielded here as a sword to penetrate the most personal zone of privacy—the clothing covering one's body—under circumstances where *adults* could not be so violated. Indeed, the Eighth Circuit's decision conflicts with the decisions of virtually every other circuit that hold strip-searches of adults in similar circumstances unconstitutional. In flouting Supreme Court precedent concerning *parens patriae* and *in loco parentis* as well as Fourth Amendment case law concerning adults, the Court denied youth critical Constitutional protections and their fundamental right to be treated with humanity and dignity[4]—in the guise of protecting them from harm.

County, 340 F. Supp. 2d 1037, 1042 (D.S.D. 2004). Many of these actions would not be criminal at all if committed by an adult.

[4] It is well-established by the international community that children must be treated with respect, humanity and dignity. *See International Covenant on Civil and Political Rights*, Art. 10; *Convention on the Rights of the Child*, Art 37 (all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person). International law is not necessary to *amici's* argument, but these standards indicate consensus within the world community regarding the treatment of children deprived of their liberty. International law has growing importance in domestic courtrooms. Although the U.S. has ratified some international covenants, which mandate treatment of youth with respect and humanity, *see, e.g. International Covenant on Civil and Political Rights*, even when international law does not place binding authority on U.S. law, it remains an influential force when considering constitutional and human rights questions. This Court has explained that "it does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage and freedom." *Roper v. Simmons*, 543 U.S.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI TO RESTORE THE PROTECTIONS OF THE FOURTH AMENDMENT TO SOCIETY'S MOST VULNERABLE YOUTH.

"The fundamental command of the Fourth Amendment is that all searches and seizures be reasonable. . . ." *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985). Where the requirement of a warrant and probable cause are not appropriate, and therefore not required, courts must balance the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

The Courts of Appeals are in agreement that a government's legitimate goal in maintaining institutional security does not justify the strip search of adults arrested for misdemeanors without individualized suspicion of wrongdoing or possession of contraband.[5] The Eighth Circuit, following the Second Circuit, relied on school search cases to assert that the concept of "special needs" dictates that children

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551, 574-78 (2005). This Court has twice stated that international authority and foreign laws are "instructive" and embody the "opinion of the world community" and therefore serve as a source of "respected and significant confirmation for the court's own conclusions." *Roper*, 543 U.S. at 578; *Lawrence v. Texas*, 539 U.S. 558, 573 (2003).

[5] *See Chapman v. Nichols*, 989 F.2d 393, 395-97 (10th Cir. 1993); *Masters v. Crouch*, 872 F.2d 1248, 1255 (6th Cir. 1989); *Weber v. Dell*, 804 F.2d 796, 802 (2d Cir. 1986); *Stewart v. Lubbock County, Texas*, 767 F.2d 153, 156-67 (5th Cir. 1985); *Jones v. Edwards*, 770 F.2d 739 (8th Cir. 1985); *Giles v. Ackerman*, 746 F.2d 614, 615 (9th Cir. 1984), *overruled by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999) on other grounds; *Hill v. Bogans*, 735 F.2d 391, 394-95 (10th Cir. 1984); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1273 (7th Cir. 1983); *Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981).

detained for minor offenses may be subjected to searches which could not be conducted on adults. *Smook v. Minnehaha County*, 457 F.3d 806, 810 (8th Cir. 2006) *citing Board of Educ. v. Earls*, 536 U.S. 822, 829-30 (2002). This analysis misstates the law.

A determination of special needs is a threshold finding that allows a court to bypass the warrant and probable cause requirement – nothing more. Thus, a search may continue in the absence of a warrant and probable cause "[o]nly in those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." *T.L.O.*, 469 U.S. at 351 (J. Blackmun concurring). Although searches absent individualized suspicion can sometimes be constitutional, *see, e.g., Board of Educ. v. Earls*, 536 U.S. 822 (2002), the determination that a case fits the "special needs" exception to the warrant requirement does not automatically eliminate the requirement of individualized suspicion. *See, e.g., Griffin v. Wisconsin*, 483 U.S. 868 (1987); *T.L.O.*, 469 U.S. at 342.

At issue here is the constitutionality of a suspicionless search. The category of constitutionally permissible suspicionless searches is "closely guarded." *Chandler v. Miller*, 520 U.S. 305, 309 (1997). "Exceptions to the requirement of individualized suspicion are generally appropriate only where the privacy interests implicated by a search are minimal and where 'other safeguards' are available 'to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field.'" *New Jersey v. T.L.O.*, 469 U.S. 325, 342 n.8 (1985). Indeed, the majority of suspicionless tests upheld by this Court have been drug tests in which the Court has characterized the intrusion of privacy as minimal or even "negligible." *See, e.g., Earls*, 536 U.S. 822; *Vernonia Dist. 47J v. Acton*, 515 U.S. 646 (1995), *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989).

This Court has upheld the serious intrusion of a strip search without individualized suspicion only in a case involving exceptional security concerns. *See Bell v. Wolfish*, 441 U.S. 520 (1979).[6]

The search at issue does not meet this test. A strip-search cannot be called a "minimal" intrusion. Indeed, a strip search is often not only intrusive, but also traumatic. Because Smook and the other children in her class were brought in on minor offenses such as curfew violations, and because many of them, like Smook, were never intermingled in the detention center population but rather picked up by their parents and driven home, the exceptional institutional security interests that would be needed to justify such a search were absent. Moreover, the doctrines of *in loco parentis* and *parens patriae* are not relevant to this context, and therefore do not affect the balancing test.

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[6] *Bell* found constitutional a strip search of adults confined post-arraignment. The population included those for whom "no other less drastic means" could reasonably ensure their presence at trial as well as "convicted inmates who are awaiting sentencing or transportation to federal prison or who are serving generally relatively short sentences. . . convicted prisoners who have been lodged at the facility under writs of habeas corpus *ad prosequendum* or *ad testificandum* issued to ensure their presence at upcoming trials, witnesses in protective custody, and persons incarcerated for contempt." *Id.* at 524. The Court concluded that an adult detention facility was "a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence. And inmate attempts to secrete these items into the facility by concealing them in body cavities are documented in this record. . .and in other cases." *Id.* at 559 (internal citations omitted). The only other suspicionless special needs searches this Court has upheld beyond the drug tests mentioned above involve lesser intrusions (such as apartment or pat-down searches) of those with diminished expectations of privacy resulting from their status as convicted criminals under state supervision. *See United States v. Knights*, 534 U.S. 112 (2001); *Samson v. California*, 126 S.Ct. 2193 (2006).

A. The Intrusion Into Personal Privacy Caused by a Strip Search is Even More Severe for Children than for Adults.

A strip search is a severe intrusion into personal privacy. *U.S. v. Mendenhall,* 446 U.S. 544, 574 (U.S.1980). Being forced to strip in front of a stranger can be frightening, demeaning and degrading. *See Wood v. Clemons*, 89 F.3d 922, 928 (1st Cir. 1996); *Chapman v. Nichols*, 989 F.2d 393, 396 (10th Cir. 1993) (strip searches are "terrifying"); *Justice v. Peachtree City*, 961 F.2d 188, 192 (11th Cir. 1992) ("The experience of disrobing and exposing one's self for visual inspection by a stranger clothed with the uniform and authority of the state…can only be seen as thoroughly degrading and frightening….[S]uch a search upon an individual detained for a lesser offense is quite likely to take that person by surprise, thereby exacerbating the terrifying quality of the event."); *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1446 (9th Cir. 1989) (strip searches produce "feelings of humiliation and degradation"); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983) (strip searches are "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission"); *Hunter v. Auger*, 672 F.2d 668, 674 (8th Cir.1982) ("[a] strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience.)[7]

[7] Whether an individual is forced to remove all of his or her clothing, or allowed to keep his or her undergarments on is irrelevant. The written JDC Policy requires removal of all the juvenile's clothing. The fact that one plaintiff was permitted to leave on her undergarments does not make the search any more reasonable. *See Justice*, 961 F.2d. at 191 (describing the severe intrusion of a search in which a juvenile was forced to strip down to her underwear).

Strip searches are perceived as particularly intrusive by children and teenagers.[8] *See, e.g., Cornfield v. Consol. High Sch. Dist. No. 230*, 991 F.2d 1316, 1323 (7th Cir. 1993) (strip search was particularly intrusive on 16-year-old, because that is the "age at which children are extremely self-conscious about their bodies"); *Doe v. Renfrow*, 631 F.2d 91, 93 (7th Cir. 1980) (strip search of 13-year-old was a "violation of any known principle of human decency"). *See also Thomas ex. rel. Thomas v. Roberts*, 261 F.3d 1160, 1168 (11th Cir. 2001), *vacated by* 536 U.S. 953 (2002) on other grounds (strip searches represented a serious intrusion on the rights of the children); *Jenkins by Hall v. Talladega City Bd. of Educ.*, 95 F.3d 1036, 1044 (11th Cir. 1996) ("the perceived invasiveness and physical intimidation intrinsic to strip searches may be exacerbated for children"). Because "youth...is a...condition of life when a person may be most susceptible...to psychological damage," *Eddings v.*

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[8] Such searches are contradictory to all international standards regarding treatment of children deprived of their liberty and children accused of crimes. State parties to the United Nations Convention on the Rights of the Child (State parties to the Convention on the Rights of the Child include all countries in the world community aside from The United States and Somalia. The U.S. has signed the Convention, but has not yet ratified it. Although it is not binding on U.S. law, as demonstrated by this Court, *supra* n. 4, it is instructive and persuasive. Almost every country in the world recognizes the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforce the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. *U.N. Convention on the Rights of the Child*, Art. 40; *See also United Nations Rules for Protection of Juveniles Deprived of their Liberty*, Part D, Sec. 3 (Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity). The use of strip searches on children being held for minor offenses does not treat them with such respect.

Oklahoma, 455 U.S. 104, 115 (1982), "[c]hildren are especially susceptible to possible traumas from strip searches." *Flores v. Meese*, 681 F. Supp. 665, 667 (C.D. Cal. 1988), *rev'd on other grounds*, 507 U.S. 292 (1993).

Research in adolescent development supports the conclusion that strip searches impact young people even more severely than adults. Because adapting to physical maturation is central to the psychological task of adolescence, teenagers tend to be more self-conscious about their bodies than those in other age groups. Anne C. Peterson & Brandon Taylor, *The Biological Approach to Adolescence: Biological Change and Psychological Adaptation, Handbook of Adolescent Psychology* 144 (Joseph Adelson ed., 1980); Edward Clifford, *Body Satisfaction in Adolescence, in Adolescent Behavior and Society: A Book of Readings* 53 (Rolf E. Muuss ed., 3d ed. 1980). With the onset of puberty, normal teenagers begin to view their bodies critically and compare them to those of their peers and their ideals, making adolescents particularly vulnerable to embarrassment. *F. Phillip Rice & Kim Gale Dolgin, The Adolescent: Development, Relationships and Culture* 173 (10th ed. 2002). Surveys confirm a high degree of anxious body preoccupation and dissatisfaction among adolescents. Peterson & Taylor, *infra*, at 144-45. This body criticism is part and parcel of the major task of adolescence: obtaining autonomy from the family and "assum[ing] the role of an adult in society." William A. Rae, *Common Adolescent-Parent Problems, in Handbook of Clinical Child Psychology* 555 (C. Eugene Walker and Michael C. Roberts, eds., 2d ed. 1992).

Accordingly, teenagers have a heightened need for personal privacy. Gary B. Melton, *Minors and Privacy: Are Legal Concepts Compatible?*, 62 Neb. L. Rev. 455, 488 (1983); Ellen Marrus, *Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality and Juvenile Delinquency*, 11 Geo. J. Legal Ethics 509 (1998). For an adolescent, privacy is a "marker of independence and self-

differentiation." Melton, *supra,* at 488. If the child's privacy is threatened, the resulting stress can seriously undermine the child's self-esteem. See also Rae, *supra* at 561 (noting the importance of confidentiality when working with adolescents) and Rice, *supra* at 180 (noting the negative impact of stress upon self-esteem and adolescent development). As the courts have recognized in many cases, including those cited above, strip searches present an extreme threat to bodily privacy.

As a result of these developmental issues, strip searches have a more serious impact on children than on adults; in fact, "a child may well experience a strip search as a form of sexual abuse." Steven F. Shatz, *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F. L. Rev. 1, 12 (1991).

> Children, even at very early ages, understand the concept that certain parts of their body are 'private.' Child abuse education programs underscore this understanding, telling children: 'No one who is bigger or older than you should look at or touch your private parts, nor should you look at or touch their private parts.' . . . Thus, the strip search—being compelled to expose one's private parts to an adult stranger who is obviously not a medical practitioner—is offensive to the child's natural instincts and training.

Shatz, *supra* at 13. Strip searches can seriously traumatize children, leading them to experience years of anxiety, depression, loss of concentration, sleep disturbances, difficulty performing in school, phobic reactions, and lasting emotional scars. See Scott A. Gartner, *Strip Searches of Students: What Johnny Really Learned at School and How Local School Boards Can Help Solve the Problem*, 70 S. Cal. L. Rev. 921, 929 (1997) (describing lasting and debilitating psychological effects of school's strip search of a student). Consequently, any strip search, no matter the underlying

justification, has a debilitating impact on children that clearly does not account for the child's best interests. [9] A strip search is even more deplorable where, as in the case at bar, it is employed against a minor who has committed no crime.

B. The Nature and Immediacy of the Governmental Concern at Issue Does Not Outweigh the Severe Intrusion on the Youths' Privacy

Neither the government's articulated justification of detecting weapons or contraband nor its justification of detecting abuse constitutes an exceptional safety need sufficient to justify such a severe privacy intrusion.

The Eighth Circuit suggested that the strip search policy was justified because it could lead to the discovery of weapons that a child could use to harm herself or others. This reasoning is unavailing. When individuals are arrested for minor non-violent offenses, there is "little reason to believe that" they "will conceal weapons or contraband." *Masters v. Crouch*, 872 F.2d 1248, 1254 (6th Cir. 1989). Thus, suspicionless searches of such individuals are unreasonable. *See, e.g., Chapman v. Nichols*, 989 F.2d 393 (10th Cir. 1993) (security interests cannot justify a strip search of women brought in for driving with suspended licenses); *Hill v. Bogan*, 735 F.2d 391, 394 (10th Cir. 1984) (if an offense is not one "associated with the concealment of weapons or contraband in a body cavity," a strip search is not reasonable); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1273 (7th Cir. 1983) (search of a woman arrested on misdemeanor charges who has been patted down bore no "relationship to security needs so

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[9] International law supports that the consequences to children should be of primary concern when the juvenile justice system implements procedures that can result in harm. *See United Nations Declaration of the Rights of the Child*, Preamble and Principle 2 ("Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection ... [t]he child shall enjoy special protection [and in] the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.").

that, when balanced against plaintiffs-appellees privacy interests, the searches cannot be considered 'reasonable'"); *Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981) (strip search of woman arrested for driving while intoxicated bore no discernable relationship to security concerns and "cannot be constitutionally justified simply on the basis of administrative ease"). The reasoning of these cases, drawn from situations involving adult misdemeanants, is no less apt in the cases of youths arrested for minor offenses.

Additionally, by definition, status offenses such as truancy, curfew violations and underage drinking, do not include any violent conduct. Status offenses are considered illegal only because the person committing them is a juvenile.[10] Thus, even more than the adult taken into custody on a minor offense, a juvenile brought in on a status offense should not be expected to be concealing weapons or contraband. Indeed, there is no substantiated correlation between incidences of curfew violations and other violent crime to support a concern that youths detained for status offenses are likely to be harboring weapons. *See Males, M. & Macallair, D., An Analysis of Curfew Enforcement and Juvenile Crime in California*, West. Crim. Review 1 (1999); *Adams, K., The Effectiveness of Juvenile Curfews at Crime Prevention*, 587 Annals Am. Acad. Pol. & Soc. Sci. 136 (2003) (finding jurisdictions with juvenile curfew laws do not experience lower crime levels, accelerated youth crime reduction or lower rates of violent juvenile death than jurisdictions without curfew laws).

The justification for a strip search is even more unfounded here, where Smook was never confined to the detention center or intermingled with other children, but remained in the waiting area until her mother picked her up to

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[10] As a result, it is widely believed across the world community that status offenses should not be criminalized. *United Nations Guidelines for the Prevention of Juvenile Delinquency – Riyadh Guidelines* at 5, 56.

drive her home. Where a detainee is not intermingled significantly with the general population, courts have found that strip searches are not justified. *Swain v. Spinney*, 117 F.3d 1, 8 (1st Cir. 1997); *Logan v. Shealy*, 660 F.2d at 1013. Thus, it is an "easy" conclusion that an adult should not be strip-searched until the determination is made as to whether she will be released on her own recognizance. *Ward v. San Diego County*, 791 F.2d 1329 (9th Cir. 1986). A child, similarly, should not be strip-searched if she is simply waiting to be released and driven home by her parents.

The Eighth Circuit itself has recognized that an adult brought into custody on suspicion of a minor non-violent offense must not be strip-searched. *Jones*, 770 F.2d at 739.[11] The court justified its departure from established Fourth Amendment jurisprudence in this case on the basis of the state's duty to protect children in its care. Although *Amici* agree that detention centers have a duty to protect juvenile detainees in their care from harm, adults are entitled to the same duty in adult correctional facilities. *See, e.g., Farmer v. Brennan*, 511 U.S. 825 (1994); *Wilson v. Seiter*, 501 U.S. 294, 303 (1991); *See also Jones*, 770 F.2d at 742 (recognizing that adult correction officials are, in part, responsible for the safety of their charges); *A.M. v. Luzerne County Juvenile Det. Ctr.*, 372 F.3d 572, 585 n.3 (3d Cir. 2004) (observing that "a juvenile detention center is comparable to a prison, which...has a duty to care for and protect its inmates"). Thus, the state's "considerations regarding contraband are the same whether the detainee is a juvenile or an adult." *Justice*, 961 F.2d at 193.[12] If the state's interest in protecting its adult charges from weapons does not outweigh the adults' privacy

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[11] Of course, weapons and other dangerous instruments may be discovered with the use of metal detectors or other less intrusive searches.

[12] That a search based on individualized suspicion would be feasible further undermines the argument that a suspicionless test is constitutional. *See, e.g., Chandler v. Miller*, 520 U.S. at 321; *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 660 (1989)

interest in being free from strip searches, it cannot logically outweigh its similarly-situated juvenile charges' privacy interest, because the controlling "considerations ... are the same" for both groups. *Id.*

The Eighth Circuit also concluded that the state's duty of care to children in its custody required JDC staff to investigate any physical abuse of detainees, and that strip searches were necessary to discover evidence of physical abuse. *Smook*, 457 F.3d at 810-11. This Court has held that, in determining the nature of the governmental concern, courts should assess the "efficacy of the means for addressing the problem." *Vernonia*, 515 U.S. 646, 663. Thus, a search that is not well-designed to effectuate its purpose weighs against a finding of constitutionality. *See Chandler v. Miller*, 520 U.S. 305, 319 (1997). In the present case, there was no evidence to suggest that staff members ever made referrals of child abuse or neglect as a result of the searches. *Smook v. Minnehaha County*, 340 F. Supp. 2d 1037, 1045 (D.S.D. 2004). More importantly, as described above, if a child has been abused, such a search would be particularly likely to traumatize him or her.[13] A search that is both ineffective at detecting abuse *and* likely to traumatize children cannot be constitutional.[14]

II. THE EIGHTH CIRCUIT'S INTERPRETATION OF THE *IN LOCO PARENTIS* DOCTRINE CONFLICTS WITH SUPREME COURT PRECEDENT.

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[13] Because trauma experienced at a young age can have particularly severe consequences, Gordon R. Hodas, *Responding to Childhood Trauma: The Promise and Practice of Trauma Informed Care*, Pennsylvania Office of Mental Health and Substance Abuse Services (February, 2006) at 9, many children will be highly vulnerable to the stress of a strip search because of histories of abuse, but display no physical signs of abuse at the time of the search.

[14] Moreover, allowing a detention center to search a child for evidence of abuse runs counter to the constitutional right of parents. *Tenenbaum v. Williams*, 193 F.3d 581, 597-99 (2d Cir. 1999).

The Eighth Circuit's decision in this case reasons that children placed in detention for curfew or other minor violations are in the protective custody of the state under the *in loco parentis* doctrine, and that the state may therefore strip search them without probable cause for their own protection. This rationale fundamentally misunderstands that doctrine for two reasons. First, the *in loco parentis* doctrine does not generally apply to the state. Second, strip searches of juveniles detained on minor offenses do not serve a child protective function.

The Eighth Circuit's decision relied heavily on the opinion of the Second Circuit in *N.G. v. Connecticut*, and quoted that court's suggestion that:

> [w]here the state is exercising some legitimate custodial authority over children, its responsibility to act in the place of parents (*in loco parentis*) obliges it to take special care to protect those in its charge, and that protection must be concerned with dangers from others and self-inflicted harm.

N.G. v. Connecticut, 382 F.3d 225, 232 (2d Cir. 2004). Both the Eighth and Second Circuit opinions fundamentally misunderstand the *in loco parentis* doctrine. The term *in loco parentis* refers to someone who is "charged, factitiously, with a parent's rights, duties, and responsibilities." Black's Law Dictionary (6 Ed. 1990) 787. The doctrine generally confers broad parental authority over the child to the person *in loco parentis*, and that person intentionally and voluntarily accepts the duties, responsibilities, and rights of a parent. *Miller v. United States*, 123 F.2d 715, 717 (8th Cir. 1941), *rev'd on other grounds*, 317 U.S. 192 (1942). The doctrine is reserved for individuals acting in the legal place of parents, and in a custodial role, and is not "designed for teachers, coaches, scout leaders, or any other persons who might temporarily have some disciplinary control over a child." *State v. Noggle*,

615 N.E.2d 1040, 1042 (Ohio 1993) (emphasis added). Accord *Powledge v. U.S.*, 193 F.2d 438, 441 n.5 (5th Cir. 1951) (analogizing persons *in loco parentis* to natural parents) and *U.S. v. Floyd*, 81 F.3d 1517, 1524 (10th Cir. 1996).

In short, the Eighth Circuit's decision in this case applies the *in loco parentis* doctrine far beyond its accepted context. This Court has made clear that when a teacher or public school official represents the state by carrying out searches and other disciplinary functions, he or she is not acting *in loco parentis* and thus is not immune from the strictures of the Fourth Amendment. *T.L.O.*, 469 U.S. at 336-37.[15] Similarly, because staff members at a juvenile detention center are agents of the state carrying out law enforcement obligations, they may not rely on the *in loco parentis* doctrine to justify their searches. The doctrine is particularly inapposite in the case of children such as Smook, who, like many other juveniles arrested on minor offenses, was never admitted into the secure detention facility, but was merely awaiting her parents' arrival when the staff conducted the search.

Both the Second Circuit decision in *N.G.* and the Eighth Circuit's decision in this case apply the doctrine, without foundation, to juvenile detention facilities and their employees, apparently because both courts have conflated the broad parental authority conferred by the *in loco parentis* doctrine with the narrower power retained by the State in its role as *parens patriae*, which applies only when normal parental authority has failed. *Cf. Schall v. Martin*, 467 U.S. 253, 265 (1984) (noting that "the juvenile's liberty interest may, in appropriate circumstances, be subordinated to the State's '*parens patriae* interest in preserving and promoting the welfare of the child'").

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[15] In *T.L.O.*, the Supreme Court explicitly rejected the notion that school personnel performing a search are acting *in loco parentis* and therefore not subject to the limits of the Fourth Amendment. *T.L.O.*, 469 U.S. at 336-37.

The doctrine of *parens patriae* does not justify the strip search at issue. Historically, the state's authority as *parens patriae* was only invoked upon the death of the child's natural parent, or upon a showing that the parent was unfit or unable to care for his or her child. *DeBacker v. Brainard*, 396 U.S. 28, 36 (1969) (the state may act if the child's parents or guardian are "unable or unwilling to do so"); *See also Prince v. Massachusetts*, 321 U.S. 158 (1944); *Vidal v. Girard's Ex'rs*, 43 U.S. 127, 168 (1844) (*parens patriae* allowed the state to take care of the "sick, the widow, and the orphan"); *Ex Parte Crouse*, 4 Whart. 9, 10 (Pa. 1839) (State may act as *parens patriae* where parents are "unequal to the task of education, or unworthy of it," or "when they are incompetent or corrupt"). This concept – that the State cannot overstep the rights of parents – infuses the Court's jurisprudence on *parens patriae*. Children "are assumed to be subject to the control of their parents, and *if parental control falters*, the State must play its part as *parens patriae*." *Schall v. Martin*, 467 U.S., at 265 (1984) (emphasis added); *see also Santosky v. Kramer*, 455 U.S. 745, 767 n. 17 (1982) ("Any *parens patriae* interest in terminating the natural parents' rights arises only at the dispositional phase, *after* the parents have been found unfit").

Moreover, the state's power under the *parens patriae* doctrine to protect children may be used to "advance only the best interests of the incompetent individual involved and not attempt to further other objectives, deriving from its police power, that may conflict with the individual's welfare." *Developments in the Law – The Constitution and the Family*, 93 Harv. L. Rev. 1156, 1199 & n.14 (1980). The claim of acting in a child's interest cannot justify violating the child's rights. *Kent v. United States*, 383 U.S. 541, 555 (1966)

("[T]he admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness.").[16]

In particular, the use of the doctrine in the criminal or juvenile justice context is highly suspect. As this Court has explained, the term *parens patriae* historically

> proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. The phrase was...used to describe the power of the state to act *in loco parentis* for the purpose of protecting the property interests and the person of the child. But there is no trace of the doctrine in the history of criminal jurisprudence.

In re Gault, 387 U.S. 1, 16 (1967). Thus, this Court has held that while the State has a legitimate interest in "protecting both the juvenile and society from the hazards of pretrial crime," due process requires that before detaining a juvenile, the State must put in place procedures that "provide sufficient protection against erroneous and unnecessary deprivations of liberty." *Schall*, 467 U.S. at 274. More specifically, the state may not conduct warrantless strip searches of children even to investigate claims that the children being strip-searched have been abused or neglected, absent prior judicial approval.[17]

Blanket policies providing for suspicionless strip searches extend far beyond what the Fourth Amendment and Due Process allow. This is especially clear in cases where the

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[16] Indeed, "civil labels and good intentions do not themselves obviate the need for criminal due process safeguards." *In re Winship*, 397 U.S. 358, 365-66 (1970).

[17] *See, e.g., Good v. Dauphin County Soc. Servs. for Children & Youth*, 891 F.2d 1087, 1092 (3d Cir. 1989); *Roe v. Texas Dep't of Protective & Regulatory Servs.*, 299 F.3d 395, 407-08, (5th Cir. 2002); *Calabretta v. Floyd*, 189 F.3d 808, 817-18 (9th Cir. 1999); *Franz v. Lytle*, 997 F.2d 784, 791 (10th Cir. 1993).

special need is not "'divorced from the state's general interest in law enforcement,'" *Ferguson v. City of Charleston*, 532 U.S. 67, 79 (2001), there is no close and substantial relationship between the intrusiveness of the search and the governmental need for the search, *United States v. Lifshitz*, 369 F.3d 173, 186 (2d Cir. 2004), and the search itself is likely to traumatize rather than protect the child. Here, the state's general interest in law enforcement is not of the immediacy that would legitimately justify an intrusive and traumatic strip search for children being detained for short amounts of time.

CONCLUSION

For the foregoing reasons, *Amici Curiae* Juvenile Law Center, *et al.*, respectfully request that this Court grant the petition for a *writ of certiorari*.

Respectfully Submitted,

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APPENDIX A

IDENTITY OF *AMICI CURIAE*

Organizations

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

Children's Law Center of Minnesota (CLC) opened for operation in 1995 and is the only legal center for children in Minnesota. CLC is a nonprofit organization whose mission is to promote the rights and interests of all children – especially children of color and children with disabilities – in the judicial, child welfare, health care and education systems. CLC carries out its mission by providing direct representation for children and by advocating and participating in statewide efforts to reform and improve the child protection and juvenile

justice systems. CLC participates in statewide committees such as the Children in Need of Protection or Services Public Defender Workgroup that examined and made recommendations for the state-wide representation of children and parents in abuse and neglect proceedings and the Children's Justice Initiative that recommends system change to change the lives of children in foster care. CLC also participates nationally in the American Bar Association Section of Litigation Children's Rights Litigation Committee Working Group and the National Children's Law Network that is forging a national agenda for the well being of children in foster care and delinquency proceedings. Children have rights and legal protections, but they are not self-supporting; they need someone, first, to help them understand how their lives can be better and, second, to speak effectively on their behalf and promote their important interests. The services that CLC provides center on the rights of children to have a voice in their own future and to be secure in their person and environment. CLC represents children who have been physically or sexually abused or neglected and are in the foster care system. A large number of these children are also brought into detention as status offenders because of running away and truancy. CLC joins this brief because of the critical public policy issue at stake for the children it serves.

The **Justice for Children Project** is an educational and interdisciplinary research project housed within The Ohio State University Michael E. Moritz College of Law. Begun in January 1998, the Project's mission is to explore ways in which the law and legal reform may be used to redress systemic problems affecting children. The Justice for Children Project has two primary components: original research and writing in areas affecting children and their families, and direct legal representation of children and their interests in the

courts. Through its scholarship, the Project builds bridges between theory and practice by providing philosophical support for the work of children's rights advocates. By its representation of individual clients through the Justice for Children Practicum and through its amicus work, the Justice for Children Project strives to advance the cause of children's rights in delinquency, status offense, abuse, neglect, and other legal proceedings affecting children's interests.

The **Barton Child Law and Policy Clinic** at Emory University School of Law was founded in March 2000. Barton was originally established to address the need in Georgia for an organization dedicated to effecting systemic policy and process changes for the benefit of the children in Georgia's child welfare system. In 2006, Barton was expanded to include a direct representation clinic known as the **Juvenile Defender Clinic** (JDC) for those children charged with delinquent and unruly offenses.

The JDC provides a clinical experience for third year law students in the juvenile court arena. The focus of the clinical experience is to provide quality representation to children by ensuring fairness and due process in their court proceedings and by ensuring that courts make decisions informed by the child's educational, mental health and family systems objectives. The JDC believes that children should be treated appropriate to their developmental status and wherever possible in their home environment. JDC believes that courts should not be used as a broker for those services that should be systematically provided by schools, medical professionals and family support systems.

The JDC at Barton is a clinic supported in its entirety by the Emory University School of Law. Legal services are provided at no cost to its clients.

The **Center for Children's Law and Policy** (CCLP) is a public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems. The Center's work covers a range of activities including research, writing, public education, media advocacy, training, technical assistance, administrative and legislative advocacy, and litigation. CCLP capitalizes on its Washington, DC location by working on juvenile justice and education reform efforts in DC, Maryland, and Virginia; partnering with other Washington-based system reform and advocacy organizations such as the Justice Policy Institute, National Juvenile Defender Center, and Campaign 4 Youth Justice; engaging in legislative advocacy with Congress; and associating with major Washington law firms which provide assistance on a pro bono basis. CCLP also works in other states and on national initiatives such as the John D. and Catherine T. MacArthur Foundation's Models for Change initiative, which promotes juvenile justice reforms, and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, which aims to reduce the use of locked detention and ensure safe and humane conditions of confinement for children.

The **Center on Children and Families** (CCF) at Fredric G. Levin College of Law is based at University of Florida, the state's flagship university. CCF's mission is to promote the highest quality teaching, research and advocacy for children and their families. CCF's directors and associate directors are experts in children's law, constitutional law, criminal law, family law, and juvenile justice, as well as related areas such as psychology and psychiatry. CCF supports interdisciplinary research in areas of importance to children, youth and families, and promotes child-centered,

evidence-based policies and practices in dependency and juvenile justice systems. Its faculty has many decades of experience in advocacy for children and youth in a variety of settings, including the Child Welfare Clinic and Gator TeamChild juvenile law clinic.

The **Northwestern University School of Law's Bluhm Legal Clinic** has represented poor children in juvenile and criminal proceedings since the Clinic's founding in 1969. The **Children and Family Justice Center** (CFJC) was established in 1992 at the Clinic as a legal service provider for children, youth and families and a research and policy center. Six clinical staff attorneys currently work at the CFJC, providing legal representation and advocacy for children in a wide variety of matters, including in the areas of juvenile delinquency, criminal justice, special education, school suspension and expulsion, immigration and political asylum, and appeals. CFJC staff attorneys are also law school faculty members who supervise second- and third-year law students in the legal and advocacy work; they are assisted in this work by the CFJC's social worker and social work students.

The **Children & Youth Law Clinic** (CYLC) is an in-house legal clinic, staffed by faculty and students at the University of Miami School of Law, which advocates for the rights of children in abuse and neglect, delinquency and other legal proceedings. Founded in 1995, the CYLC has appeared as amicus curiae in numerous federal and state court cases implicating significant due process and therapeutic interests of children in state custody. The CYLC has pioneered the use of "therapeutic jurisprudence" in its advocacy for children in dependency, mental health, delinquency, and other court proceedings. Therapeutic jurisprudence is a field of social inquiry with a law reform agenda, which studies the ways in

which legal rules, procedures, and the roles of legal actors produce therapeutic or anti-therapeutic consequences for those affected by the legal process. The CYLC works to ensure that children are treated with dignity and respect by public agencies charged with their care and custody, and by the courts charged with the oversight of the agencies providing care to children in their custody. We believe that public policy should further the therapeutic interests of children, minimize anti-therapeutic consequences of the legal process, assure their fair treatment, and promote the rehabilitative purposes of the juvenile justice system.

The ***Civitas* ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in juvenile delinquency, domestic relations, child protection, and other types of cases involving children. The Child Law Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court-involved youth.

Founded in 1997, the **Juvenile Justice Project of Louisiana** (JJPL) has established itself as a partner in efforts to reform Louisiana's juvenile justice system. We have dedicated ourselves to advocating not only for more effective, less expensive alternatives to incarceration, but also for the zealous and effective representation of children in the juvenile and criminal justice systems. JJPL was founded on the recognition that children and adolescents are fundamentally

different from adults and, as such, require developmentally appropriate interventions and advocacy. The manner in which the judicial system responds to young people in crisis has been a central focus of JJPL. We believe that children must be afforded essential due process protections and that such protections necessarily include a consideration of their developmental capacities and limitations. This is particularly the case where a child is likely to feel intimidated by authority figures. Given the ways in which young people are especially susceptible to police questioning and interrogations, a juvenile must have meaningful access to counsel to ensure his rights are protected. JJPL is committed to ensuring that children and youth accused of wrongdoing receive the appropriate protections of the law.

The **Kids First Law Center** is a nonprofit public interest organization for children in Cedar Rapids, Iowa. Kids First opened in January 2005 and provides free legal counsel to children in high-conflict custody and divorce cases. Kids First focuses on the needs and rights of children placed in the middle of conflict. The organization strives to make children's voices heard in the court system. We believe judges and attorneys should seek to understand situations from the child's perspective. Adults should recognize that children who have been victims of abuse should be treated in ways that do not re-victimize them.

The **Mid-Atlantic Juvenile Defender Center** (MAJDC) is a multi-faceted juvenile defense resource center that has served the District of Columbia, Maryland, Puerto Rico, Virginia and West Virginia since 2000. We are committed to working within communities to ensure excellence in juvenile defense and promote justice for all children. MAJDC promotes research and policy development

throughout the region by conducting state-based assessments of juvenile indigent defense delivery systems. Following the assessment, MAJDC staff work to ensure the report is used to educate the public about issues related to the delivery of indigent defense services for juveniles and assists the public defender systems in responding to assessment recommendations. MAJDC also responds to the needs of juvenile defenders by coordinating training programs, providing technical assistance and maintaining a list-serve of juvenile defenders to respond to defender questions. MAJDC is a 501 (c)(3) non-profit organization.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. It also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The **New England Juvenile Defender Center, Inc.** was created in 2000 to ensure excellence in juvenile defense and promote justice for children in the juvenile justice systems

of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. The Center focuses primarily on supporting defenders to provide the best possible services to court-involved children and to ensure that the juvenile justice systems in New England treat children like children and provide them with real opportunities for care and treatment where appropriate. The Center has also created a Juvenile Impact Litigation Fund to support solo practitioners and organized groups of attorneys to challenge conditions of confinement in the region. The NEJDC is a non-profit public interest organization.

The **Northeast Regional Juvenile Defender Center** (NRJDC) is dedicated to increasing access to justice for and the quality of representation afforded to children caught up in the juvenile and criminal justice systems. Housed jointly at Rutgers Law School - Newark and the Defender Association of Philadelphia, the NRJDC provides training, support, and technical assistance to juvenile defenders in Pennsylvania, New Jersey, New York, and Delaware. The NJRDC also works to promote effective and rational public policy in the areas of juvenile detention and incarceration reform, disproportionate confinement of minority children, juvenile competency and mental health, and the special needs of girls in the juvenile justice system.

The **Office of the Juvenile Defender** (OJD) in Vermont is an office within the Office of the Defender General. The Office of the Defender General is responsible for providing public defender representation to qualified Vermont citizens. The OJD was established to provide ongoing post-dispositional legal representation to those children and youth who were the subject of abuse, neglect or delinquency petitions in Family Court, were represented by

public defenders statewide, and, as a result of those proceedings, were placed in the custody of the Commissioner of the Department for Families and Children (DCF), Vermont's child welfare agency. The OJD provides legal representation to its clients at caseplan review meetings, various administrative hearings and when they are placed at the Woodside Juvenile Rehabilitation Center, which houses Vermont's sole juvenile detention center. The OJD pays particular attention to those children who are placed at the juvenile detention center and endeavors to ensure that their Constitutional rights are protected and that they are treated fairly by DCF and receive appropriate services.

The **Pacific Juvenile Defender Center** (PJDC) is a regional affiliate of the National Juvenile Defender Center. PJDC is a collaborative effort of the San Francisco Office of the Public Defender and the Center on Juvenile and Criminal Justice. The PJDC is housed at Legal Services for Children. The Defender Center provides support, training and technical assistance for juvenile defenders throughout California and Hawaii. It is the mission of the Defender Center to improve the quality of juvenile defense in our region and ensure that juveniles are provided with holistic representation that meets their needs.

The **San Francisco Public Defender's Office** provides legal representation per year to approximately 1,400 juveniles, aged 10-18, who are arrested and charged with delinquent offenses. The majority of the juvenile clients represented by the office come from difficult family circumstances and live in dangerous and poverty stricken neighborhoods and are in need of legal and social services. Our juvenile clients are a very vulnerable population with needs that are substantial and involve multi-systems

collaborations such as with special education, mental health, dependency and immigration. The goal of the juvenile justice system is very different form the adult system. We recognize the need to treat children going through adolescence very differently than adults.

The **Southern Juvenile Defender Center** (SJDC) works to ensure excellence in juvenile defense and secure justice for children in delinquency and criminal proceedings in the southeastern United States. SJDC provides training and resources to juvenile defenders, and advocates for systemic reforms designed to give children the greatest opportunities to grow and thrive. Through public education and advocacy, SJDC encourages attorneys and judges to rely upon scientific research concerning adolescent brain development in cases involving youthful defendants. SJDC is based at the Southern Poverty Law Center ("SPLC") in Montgomery, Alabama. Founded in 1971, SPLC has litigated numerous civil rights cases on behalf of incarcerated children and other vulnerable populations.

The **Women's Law Project** (WLP) is a non-profit legal advocacy organization in Pennsylvania. Founded in 1974, the WLP works to advance the legal and economic status of women through litigation, public policy development, education and one-on-one counseling. The WLP is committed to protecting the health and well-being of young women. Throughout its existence, the WLP has played a leading role in the struggle to protect women's privacy, safety, and treatment under the law in the context of health care decisions and law enforcement's response to sexual assault and domestic violence. The WLP served as co-counsel for plaintiffs in *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), *Planned Parenthood v. Casey*, 505 U.S. 833

(1992), and *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986). The Women's Law Project has also worked on a variety of projects to improve the conditions of women prisoners across the state of Pennsylvania, starting with litigation on behalf of women prisoners in the State Correctional Institution at Muncy that drastically altered the way women were incarcerated in Pennsylvania (*Beehler v. Jeffes*, 664 F. Supp. 931 M.D. Pa. 1986) and continuing to the present day.

Individuals

Professor Emily Buss is Professor of Law and Kanter Director of Policy Initiatives at the University of Chicago Law School research and scholarship is in the area of children's and parental rights. Recent articles include *Constitutional Fidelity Through Children's Rights*, 2004 Supreme Court Review 355, which demonstrates the need to account for child and adolescent development in applying constitutional rights to minors.

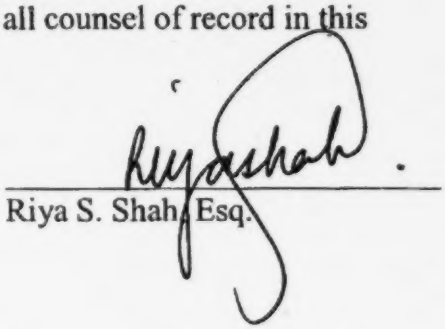
Professor Barry Feld is Centennial Professor of Law, University of Minnesota Law School. He received his B.A. from the University of Pennsylvania; his J.D. from University of Minnesota Law School; and his Ph.D. in sociology from Harvard University. He has written eight books and about seventy law review and criminology articles and book chapters on juvenile justice with a special emphasis on serious young offenders, procedural justice in juvenile court, adolescents' competence to exercise and waive *Miranda* rights and counsel, youth sentencing policy, and race. Feld has testified before state legislatures and the U. S. Senate, spoken on various aspects of juvenile justice administration to legal, judicial, and academic audiences in the United States

and internationally. He worked as a prosecutor in the Hennepin County (Minneapolis) Attorney's Office and served on the Minnesota Juvenile Justice Task Force (1992 -1994), whose recommendations the 1994 legislature enacted in its revisions of the Minnesota juvenile code. Between 1994 and 1997, Feld served as Co-Reporter of the Minnesota Supreme Court's Juvenile Court Rules of Procedure Advisory Committee.

Professor Wallace Mlyniec is the Associate Dean of Clinical Education and Public Service Programs, Lupo-Ricci Professor of Clinical Legal Studies, and Director of the Juvenile Justice Clinic at Georgetown University Law Center. He teaches courses in family law and children's rights and assists with the training of criminal defense and juvenile defense fellows in the Prettyman Legal Internship Program. He is the author of numerous books and articles concerning criminal law and the law relating to children and families. Wallace Mlyniec received a Bicentennial Fellowship from the Swedish government of study their child welfare system, the Stuart Stiller Award for public service, and the William Pincus award for contributions to clinical education. He holds his B.S. from Northwestern University and his J.D. from Georgetown University.

CERTIFICATE OF SERVICE

I, Riya S. Shah, Esq., do hereby certify this 27th day of February, pursuant to Supreme Court Rule 29, that three copies of the Motion of Juvenile Law Center for Leave to File and Amicus Curiae Briedf in Support of Petition for a Writ of Certiorari and Brief of Juvenile Law Center in Support of Petition for a Writ of Certiorari in the case of *Smook v. Minnehaha County*, Docket number 06-1034, have been served, via first class mail on all counsel of record in this appeal as follows:



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